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**The European Citizens' Initiative:
An early assessment
of the European Union's new participatory democracy instrument**

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This brand new tool for participatory democracy...will strengthen the democratic foundations of the Union and bring Europe closer to the citizens by providing a direct gateway through which they can make their voices heard in Brussels.

- Maroš Šefčovič, Vice-President of the European Commission

Introduction

The world's first transnational, digital right of initiative, the European Citizens' Initiative (ECI) took effect on April 1, 2012, when the *EU Regulation on the citizen's initiative* (No 2011/2011) entered into force. The ECI gives citizens within European Union (EU) Member States the right to call on the European Commission to propose new or change existing EU legislation. For an ECI to be considered, the subject matter must be within the Commission's legislative competence and organizers must gather at a minimum 1 million signatures (0.2 percent of the EU's population of 502 million) from at least ¼ of EU Member States (currently seven) in one year. Nine months on, the new instrument has met with several difficulties in this experimental phase of implementation, and only eight ECIs have been able to start online signature collection.

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While it is too early to cast judgment on whether the ECI will become a useful tool for citizen engagement and participation in the EU, this policy brief explores the reasons for the ECI, some of its early challenges, and its policy relevance for Canada. Despite its rocky start, the ECI represents an innovative first step towards a more inclusive and democratic Europe, and it could help in the development of a European public sphere and in the building of greater solidarity within the Union. To achieve this, EU institutions and civil society organizations (CSOs) can play a key role in providing the supportive infrastructure and assistance to ECI organizers to ensure that EU citizens are afforded the genuine opportunity to utilize their new right.

The ECI as a step towards a more democratic and legitimate EU

In academia, there is a debate over whether or not a “democratic deficit” exists between the institutions and citizens in the EU’s political system (see for example Moravcsik 2002 and Follesdal and Hix 2006). An underlying concern is that the EU’s electoral, institutional, and consultation processes are not able to provide the necessary democratic legitimacy for its policy-making. The economic and financial crisis has exacerbated doubt over the EU’s democratic legitimacy.

Hurrelmann (2012) surveys the mechanisms of democratic input in the EU and raises several concerns over how effective citizens can be in democratically influencing the EU’s decisions. He notes (2012, 6) that despite citizens’ ability to elect Members of the European Parliament (MEPs), the “second order” characteristic of EU elections—the fact that most citizens elect MEPs based on party popularity in the domestic arena, rather than on important EU issues—means that the substantive representative connection between citizens and MEPs is tenuous. Moreover, voter turnout in the last elections to the European Parliament in 2009 reached an all-time low of 43 percent of eligible voters (Vucheva 2009), lower than most Member State national voter turnout records. Hurrelmann also discusses (2012, 7) a second channel for citizens to democratically influence the EU: through their Member States’ national elections (thereby having a stake in their government’s representatives to the EU’s intergovernmental Council of Ministers) and via national referendums on certain EU topics (e.g. the EU Constitution, the Treaty of Lisbon, joining the Eurozone, or acceding to the EU). Hurrelmann notes however, the limitations to this channel of input: national elections are “no more about Europe than EP elections” and, although referendums are of greater significance for EU level politics, given that they are held on issues of European integration (which is a fairly good basis to judge perceptions on EU legitimacy), the range of issues put to a referendum is relatively narrow (2012, 9). While important for assessing the Union’s democratic legitimacy, the EU’s electoral system and the role of the European Parliament and that of national Member States are topics beyond the scope of this policy paper. Alternatively, in its focus on the ECI, this paper relates to a third channel for democratic input into the EU: citizen and interest group involvement in EU policy-making.

Hurrelmann asserts (2012, 14) that the ECI could help reduce the significant power that established lobbies have in Brussels, but that it will not solve two other deficiencies in the EU system: (1) that the Commission ultimately has the power to decide on whether or not to take action, and (2) that even if the Commission adopts a decision, legislation may still be altered by the Council of Ministers and by the European Parliament. However, as will be outlined, it is too early to assess the Commission's and other institutions' track records vis-à-vis the ECI, there is nothing inherently wrong with the institutions modifying citizens' proposals, and these concerns do not take away from the fact that the ECI is a first step towards greater citizen-led democracy.

The ECI can help bridge the gap between the EU and its citizens, many of whom feel detached from policies being made for them by Brussels, do not see the relevance of the EU to their everyday lives, and/or see EU institutions as being too bureaucratic. Fritz Scharpf (1999) differentiated between the concepts of input legitimacy ("governance by the people") and output legitimacy ("governance for the people"). As a citizen-initiated agenda-setting tool, the ECI could improve the EU's input legitimacy, which may, in turn, lead to better output legitimacy. The ECI could equally help address the trend of low voter turnout and low citizen engagement¹ with EU policy-making, given the media attention and political spotlight that may be placed on ECIs. What follows is an introduction to the ECI and its requirements.

The ECI was included in the Treaty of Lisbon (Art. 11.4), which entered into force in December 2009.² It took over a year to draft and pass legislation on the ECI, in order to provide time for public consultation and for the EU institutions to provide proposals on the Regulation's provisions. Following the adoption of the Regulation in February 2011, the Commission was given until January 2012 to develop the free of charge open-source online collection software, and Member States, many of whom did not have prior experience with such a participatory instrument, were tasked with preparing for implementation of the Regulation, including the designation of national authorities for the verification of online collection systems and for the certification and verification of collected signatures. In April 2012, the Regulation entered into force, giving ECI organizers the green light to start signature collection following registration of their ECIs with the Commission.

In terms of the requirements for a successful ECI, according to the Regulation, ECI organizers must follow these steps sequentially:

1. Moravcsik (2002) argues that low citizen engagement results from a lack of interest in the EU's main powers—trade liberalization, agricultural policy, and technical regulation, etc.—rather than a deficiency in its institutions. Regardless of the source of citizens' lack of interest, the ECI does at a minimum provide a new avenue for citizens to enter the EU's political arena, and through attention given to it, it could generate greater citizen interest in how the EU's policies affect them.

2. A right to a citizens' initiative was first proposed to the European Constitutional Convention and included in the 2003 Draft Constitutional Treaty. For more on the history of the ECI and the story of how citizens from civil society organizations like Democracy International and the Initiative and Referendum Institute Europe successfully lobbied to include the ECI in the Treaty of Lisbon see here: http://www.citizens-initiative.eu/?page_id=2.

- Prepare their initiative as either a draft legal proposal or as general principles (in any of the EU's languages), form a citizens' committee comprising at least one individual from at least 7 Member States, and designate a contact person and alternate;
- Register their initiative with the Commission, which will answer the organizers within 2 months;
- Find a host provider for signature collection (that must be certified by the national authority in the country where the server is housed), using either the Commission's free of charge open-source online signature collection software or software from a private supplier;
- Collect at a minimum 1 million handwritten and/or online signatures (referred to in the Regulation as "statements of support")³ in at least seven Member States over a maximum period of 12 months. Further, there are threshold requirements for each Member State to qualify among the seven, currently equivalent to the Member State's number of Members of European Parliament (MEPs) multiplied by 750;
- Get statements of support certified by national authorities⁴, who will provide an answer to organizers within 3 months; and,
- Submit the ECI to the Commission, which will examine and reply to the initiative.

The Regulation envisions that a citizens' committee, rather than individuals, corporations, or non-governmental organization (NGOs) shall spearhead an ECI. This is to ensure that the ECI has reasonable prospects for achieving its signature target, and so it cannot be captured by powerful interests such as large lobby groups and well-established European associations. While ECI organizers may collect funding, information about contributions over 500 euros must be made publicly accessible; the information is posted by the Commission on its official online register for the ECI⁵.

Before signature collection, organizers must register their initiative with the Commission, which will check to see that the ECI meets certain minimal legal criteria. As per the Regulation, the ECI shall be registered, provided that the subject matter of an ECI is not manifestly contrary to the values of the EU⁶, not abusive, frivolous, or vexatious, nor outside the scope of the Commission's powers to propose legislation "for the purpose of implementing the treaties" (Art.

3. To support an ECI, one must be an EU citizen (national of an EU member state) and be old enough to vote in European Parliament elections (18 except Austria where the voting age is 16).

4. In 18 Member States, national authorities require a personal ID number (for example, a passport number or national identity card) to be provided by supporters of an initiative. In ECI pilots, the need to provide personal information was a deterring factor for potential supporters.

5. The Commission's official online register for the ECI: <http://ec.europa.eu/citizens-initiative/public/welcome>

6. Article 2 of the Treaty on European Union: 'The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between men and women prevail.'

4.2). The ECI provides organizers with substantial scope to influence the EU in any area where the Commission has a legal base to act under the Treaties, including in matters related to energy, environment and climate change, consumer protection, the internal market, research and innovation, transportation, public health, agriculture, fisheries, the EU's budget, external trade, regional policy, and certain means of taxation. Treaty amendments or initiatives in policy areas where the Commission has neither exclusive nor shared competence are ineligible. For example, initiatives on social security benefits across Europe, on school systems, or on the European Security and Defence Policy would be rejected by the Commission. Should the Commission reject registering an initiative, it must provide clear reasons for doing so in a communication to ECI organizers, who are given the right of appeal to the European Court of Justice.

Should the required thresholds be met—a minimum number of signatures in at least seven EU Member States and a total of at least one million signatures⁷—organizers of a successful ECI will be invited to explain their initiative to the Commission and to a public hearing at the European Parliament. The Commission will then decide whether or not to initiate legislation⁸ on the ECI or perhaps, take time to study it further. The Commission is not obliged to propose legislation on a successful ECI; however, the moral weight behind the voice of 1 million citizens would make such an initiative difficult for the EU to ignore.

The ECI thus gives citizens the same right as the European Parliament and Member States to propose legislative measures for the Union. Under the Lisbon Treaty, the Commission remains the sole EU body actually able to initiate legislation. The ECI is therefore an “agenda-setting mechanism and is in the realm of participatory democracy as opposed to a more binding form of direct democracy” (such as “ballot-box” initiatives and referendums) (ECAS 2011) that is the practice in countries such as Switzerland or in the State of California.

While the ECI presents a new avenue for citizens to affect the EU's policy agenda, organizers must do the necessary preparatory work—defining their purpose and objectives, finding an appropriate legal base, building coalitions and fundraising—to ensure that it is the right option and that they can achieve success. As noted by the Commission (2012), there are other ways of influencing the EU. For example, EU citizens can participate in public consultations, petition the European Parliament (for cases where a petitioner is personally affected), or approach the EU Ombudsman for cases of maladministration within EU institutions.

7. Statements of support collected in countries where the threshold has not been reached will also be counted toward the one million target.

8. Even if the Commission decides to present a successful ECI as a legislative proposal, it must go through the normal legislative process involving both the Council of Ministers and the European Parliament, which may result in amendments to the ECI organizers' proposals. Organizers will therefore need to follow the legislative process even after a successful initiative is tabled as legislation.

An ECI may be the best vehicle⁹ for organizers who wish to place a new issue on the EU's agenda or to change or repeal current EU legislation.

The first 9 months...

Experience of organizers of the first ECIs show where there are weaknesses and challenges, but also opportunities for the ECI to become a successful instrument. The ECI Regulation will be reviewed in 2015, so the first ECIs will inform authorities on areas where revisions may be needed. It is too early to assess how receptive EU institutions will be to ECIs; however, one may look at the early record to see where/how improvements could make the ECI a more citizen-friendly and useful tool. As of early-January 2013, the Commission registered 15 ECIs, but only eight of which started (just recently) to collect online signatures; these include:

- (1) an initiative ("Fraternité 2020...") that proposes funding for exchange programs—like Erasmus or the European Voluntary Service—to increase mobility and to contribute to a more united Europe (so far, 57,000 signatures);
- (2) an initiative ("Water and sanitation are a human right!...") that aims to make water and sanitation a human right across the Union and to promote these as essential public services (so far, 267,200 signatures);
- (3) an initiative ("Single Communication Tariff Act") that aims to end roaming fees across Europe by introducing a unique all-inclusive, monthly flat-rate communication tariff within the boundaries of the EU (number of signatures not available at the time of writing); and,
- (4) an initiative ("30 km/h - making the streets liveable!") that calls for an EU-wide speed limit for urban and residential areas (number of signatures not available at the time of writing).

In addition to the above, a wide-range of subjects are covered in the registered initiatives, among them: a call to protect media pluralism across the EU, a request to suspend the EU's climate and energy package, and an initiative demanding the right for EU citizens to be able to vote in their country of residence regardless of their nationality. One ECI, on the EU directive on dairy cow welfare, was withdrawn by organizers, while seven initiatives have been refused registration, as the Commission deemed them not to have fulfilled the conditions of the Regulation. One rejected initiative, a call to phase out and eventually ban the use of nuclear power in the Union, is exploring available legal avenues and considering the modification of its proposed text for re-submission to the Commission.

9. In the *European Citizens' Initiative Pocket Guide* (Initiative and Referendum Institute and the Green Foundation, March 2012, Belgium), Bruno Kauffmann identifies six potential uses of the ECI: getting the EU to do something new; stopping the EU from doing something; improving current EU legislation; using the ECI as a "bargaining chip" to influence EU policy-making; using the ECI as a catalyst to build broad alliances and networks across Europe; and, using the ECI to make oneself/one's group better known in the public sphere.

It is premature to judge the Commission's early registration record—15 registered, seven rejected for registration—but, it is clear that organizers should seek sound legal advice before proposing their ECI to the Commission, as the language and legal base used could make the difference between whether or not an ECI is registered (as was the case for some of the rejected ECIs on issues related to the economic crisis). Nevertheless, according to an assessment produced by the European Citizen Action Service (ECAS), an NGO providing support on the ECI to citizens, the start looks promising, given the broad range of subjects registered and their conflicting nature, a sign of health in a democracy (ECAS 2012).

One of the major problems early on relates to the difficulty that organizers have faced in setting up an online collection system on a secure data server (necessitated by the strict data protection and privacy requirements for ECIs¹⁰), which has meant, as noted, that only eight ECIs have begun (just recently) to collect online signatures. ECI organizers are left to invest their own energy and funds to find a host platform, notify data protection authorities, install the software, and prepare and submit risk and business management documents for certification of the online collection system. These actions are costly and not intuitive for citizens without the necessary technical and legal expertise. ECAS, which has investigated the possibility of establishing an online collection system on a secure server in Brussels, estimates the cost of setting up one's own secure online system as falling within the range of 20,000 to 30,000 euros, an amount beyond the means of most organizers (ECAS 2012).

While they have the option of using the Commission's free open-source software for signature collection, organizers recommend that the software should be made more user-friendly. In a recent article, Carsten Berg—Director of the ECI-campaign for a citizen-friendly ECI—provides suggestions for making the software more user-friendly for normal citizens and users, including the simple measure of giving signatories the option to check a box if they wish to stay in contact with the ECI organizers to receive updates and to build longer-term networks (Berg 2012). Without such a simple feature, ECI organizers are limited in their ability to communicate with supporters of an initiative.

To address these early difficulties and the complaints by ECI organizers and CSOs, the Commission offered, in an exceptional measure, to temporarily install the organizers' online collection system on a platform in the Commission's Datacentre in Luxembourg free of charge and to support organizers in their certification of the system with Luxembourgish authorities. The Commission also extended the period of collection for ECIs registered before November 1, 2012 until November 1, 2013 (ECIs registered after November 1, 2012 will have the normal one year for signature collection from the date of registration). While these are positive measures being taken by the Commission to facilitate the usability of the ECI, organizers and CSOs

10. For a full list of these requirements, see here: <http://ec.europa.eu/citizens-initiative/public/data-protection>.

closely involved see the need for the Commission to provide further supportive infrastructure and assistance. For example, while the Commission provides a point of contact for information and assistance, and uses its 800 Europe Direct offices across Member States for basic citizen enquiries, the resources dedicated to the ECI in Brussels are limited. A fully staffed ECI help centre as well as provision of an improved online collection system, and a permanent host datacentre would better facilitate the ability of citizens to make use of their new right. Indeed, one registered ECI is calling for the EU to establish a central online collection platform for ECIs, a “low barrier tool which works instantly and without [the need for] technical expertise.”

Turning the ECI into an opportunity for real innovation in policy-making

Although it sounds relatively simple to achieve the one million signature threshold, in fact this is a complex and challenging task, which involves collecting an average of 2,740 signatures a day! To reach the threshold, a successful campaign requires coordinated efforts over an extended period of time before and after the one year allowed to collect signatures (ECAS 2011).

First, a sustained campaign over one year requires the human and financial resources to reach out to the pan-European public. Organizers need to build broad networks, alliances and coalitions between civil society and non-governmental organizations, as well as with the media, in order to raise awareness, generate debate, and cultivate support for an ECI. Energy, patience, and strategic thinking are needed to achieve success with an ECI. Volunteers must be mobilized, and the ECI must be assertively promoted and advertised; additional requirements for success would be the development of a website and resources for translation costs (for the ECI, promotional materials, and the website). Based on the 20 pre-ECI-Regulation pilots (four of which were successful, but none of which were in accordance with the Regulation), ECAS estimates that organizers would need an estimated 1 million euros each (or 1 euro per signature) for the entire campaign; however, the greater resonance the topic has with the public, the less funds are necessary (ECAS 2012). So far, the 15 registered ECIs have managed only to raise 332,500 euros in total.

In an assessment of the ECI, Kaufmann (2012b) suggests that revisions to the ECI Regulation should include measures that focus on the needs of organizers and authorities at the EU and Member State levels, including: better training, education, and support from EU institutions and CSOs; the development by CSOs, academia, and the media of a mutual understanding as to the necessary preparations, pre-assessments and strategic readiness, including the need for fundraising for a successful ECI; and, reconsideration of the financial aspects to enable citizens to make efficient use of the instrument. According to Kaufmann, “there is at this time no serious question as to *whether* the European Citizens’ Initiative can ultimately

deliver more democracy to Europe(ans); [however,] *how* and *when* it will be possible to identify and assess such added-value remains in question” (2012b).

Fortunately, the digital age and communications technologies are making it possible for individuals to connect across borders in an efficient manner, enabling citizens to easily network, and to do so with limited structures and budgets. While not a panacea, social media can be used as a cost-effective way to promote and provide updates on ECIs. Media coverage now reaches beyond borders instantaneously. Online forums, such as initiative.eu, can provide an online space to federate would-be organizers of ECIs sharing similar interests and to foster discussion. Funding can be collected by organizers in one country and rapidly transferred to another country where it is needed. Should a topic resonate well enough with the public, resources could in fact materialize *ad hoc* through crowd-sourced funding¹¹. In short, the capability for mass transnational collaboration facilitated by information communications technologies is within reach for EU citizens wishing to make use of the ECI.

Citizens around the world are increasingly expecting open democracy and institutions that respond to their needs, and demanding a voice and direct involvement in matters that affect them. Jurisdictions have responded with new collaborative forms of citizen engagement and the opening up of their democratic institutions. Some examples include the crowd-sourced drafting of Iceland’s new Constitution and of law-making in Finland, and the fall of regimes during the Arab Spring. These citizen movements suggest that the call for more participatory institutions, open government, transparency, and accountability is becoming the norm. It has indeed become an era of global citizen engagement.

In this context, ECIs have the potential to drive forward measures in the EU that could either strengthen the Union or weaken it. Citizens can now take the driver’s seat over, and possibly overcome institutional paralysis on issues, by proposing action in important areas such as the EU’s development aid, its energy policy, or perhaps to pressure EU politicians into adopting a financial transactions tax, as recently suggested by European Parliament President, Martin Schulz (Mahony 2012).

That said, the average citizen in the EU is not yet aware of the existence or potential of the ECI. For it to be successful, the EU institutions would do well to put in place a communications strategy and campaign to inform citizens across the Union of their new right. The 2013 European Year of Citizens and the run up to the EU Parliamentary elections in June 2014 provide excellent opportunities in that regard.

11. Small amounts of money provided by large numbers of people, often before a product is made or an initiative is launched.

The ECI represents a first step to a more citizen-driven and inclusive Europe. According to ECAS: “It should better enable citizens to focus not only the Commission’s attention, but also that of the media and of the general public to a certain topic and to, perhaps, initiate a European-wide debate and possibly, legislation, on it” (ECAS 2011). Despite its early difficulties, the ECI also promises to embrace an era of transnational, e-democracy and, through the use virtual social networks, there is an opportunity to develop more active citizen participation in EU affairs. Thompson notes (2011) that now that there is a “space inside Europe for the public”—the creation of new, temporary spaces inside the EU for citizens, media, and communities to discuss an ECI topic and affect the EU’s policy-making machine—there is a better chance to develop a “European public space” and to facilitate greater EU public engagement.

The revision of the ECI Regulation in 2015 should take into account the early implementation challenges, including the need for supportive infrastructure, a more citizen-friendly ECI, and better public education on the new right. Putting these measures in place will ensure that the ECI is designed in a practical and user-friendly way so that a real European public space can begin to emerge and so the right can be realized by citizens.

A road for Canada to follow?

As an innovative policy experiment, the ECI could be considered in Canada (also a multi-level system of government, which faces, arguably, a democratic deficit between citizens and elected officials) as a way to try to address a decline in voter turnout and in political party membership, and a general lack of engagement in politics.

While Canada has experience with direct (legally-binding) democracy—some notable examples include British Columbia’s (BC) vote to defeat the HST (CBC 2012), referendums on electoral reform in BC and in Ontario, the 1980 and 1995 referendums on the question of Quebec separation, and the national referendum on the Charlottetown Accord—these approaches are the exception rather than regular practice, and referendums in Canada have more often been driven by political leaders than by citizens at the grassroots. Moreover, existing initiative legislation in Canada sets such demanding requirements that initiatives are rarely brought to a referendum. The most well-known and widely used legislation at the provincial-level is BC’s Recall and Initiative Act (Elections BC), which allows BC voters to propose new laws or changes to existing laws (so long as they are within the jurisdiction of the Legislature of British Columbia) and to petition to remove a Member of the Legislative Assembly from office (the process is unique in Canada). The only successful initiative and referendum in BC was on the HST, due to the demanding requirements of BC’s legislation (i.e. the need to achieve 10 percent support of constituents in each riding across the province) (Delaney 2010). For its part, the new minority Parti Québécois (PQ) government in Quebec made a campaign pledge to introduce citizens’ initiative legislation

for the province, which could lead to a third referendum on Quebec sovereignty¹² (Schwartz 2012).

While initiatives could be used for contentious motives such as the PQ's proposal for Quebec separation, a democracy, by nature, should be open to healthy political debate amongst citizens. A participatory, initiative-type vehicle such as the ECI could offer a potential avenue to engage Canadians and to act as a catalyst for greater democratic participation. While preserving and balancing the representative system of democracy, an ECI-like instrument could open the door to directly involve citizens who in the 21st century are more likely to join issue-based, direct action campaigns, and to cluster temporarily around issues that appeal to them than to join a political party. The digital and participatory elements could equally provide a window for the younger, technology-savvy generation to become more politically engaged. Developed correctly, such a tool at the federal, the provincial/territorial (including possible modifications to BC's Act) or the municipal level would be an intriguing policy proposal. There are risks to not developing the tool correctly, as well as in a case where politicians do not pay serious attention to the implementation of the right. In Canada, as in Europe, such situations may serve to increase citizens' distrust in, frustration with, and alienation from their democratic institutions.

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12. While PQ Premier Pauline Marois has not yet introduced legislation or any details, the PQ platform states that it would call a referendum when it gets the support of 15 percent of the electorate, the equivalent of 850,000 Quebecers.

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